IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3079 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AKBARBHAI IBRAHIMBHAI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR MC BHATT for Petitioner

MR M.A.BUKHARIA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

Rule,. Mr. M.A.Bukhari, learned AGP appears for the respondents and waives service of notice of rule. In the facts and circumstances, the matter is taken up for final

hearing today.

This petitions is filed against an order, dated December 21, 1998. Annexure `A', passed by the Sub-Divisional Magistrate , Dhrangadhra -licensing authority- and confirmed by the District Magistrate, Surendranagar in appeal on 24th March, 1999 at Annexure `C'.

The case of the petitioner is that he is a farmer. He applied for licence of fire arm for protecting his crop. It was stated in the application that several other farmers in the village and residing in nearby areas were granted fire arm licences on such ground. The application filed by the petitioner was ,however, rejected by the licensing authority inter alia observing that no necessary evidence was produced that crop was damaged by wild animals and for protection of such crop, he required 12 bore gun.

Being aggrieved by the said order, an appeal was preferred and the appellate authority also confirmed the order passed by the licensing authority observing that looking to the facts and circumstances of the case as also the relevant record, it was not thought proper by the appellate authority that for protection of crop, the petitioner required 12 bore gun. In the opinion of the appellate authority, it was sufficient if petitioner can hold muzzle loaded gun. It was observed in the appellate order that the petitioner was not willing to take licence of muzzle loaded gun and since application was for 12 bore gun which was not proper, the appeal was required to be dismissed. Accordingly, the appeal was dismissed.

At the time of hearing, several contentions were raised by the learned advocate for the petitioner. It was submitted that other persons were granted licences. It was also stated that no documents were demanded from the petitioner . The petitioner was ready to produce all relevant documents and satisfy the licensing authority as well as the appellate authority about his need. It was stated that even now the petitioner is ready and willing to produce all necessary documents to prove his need and necessity of 12 bore gun and hence the orders passed by the authorities below are required to be quashed and set aside.

An affidavit in reply is filed by Mr. B.M.Prajapati, (GAS) Sub-divisional Magistrate, Dhrangadhra in which it was stated that the petitioner had made an application to the Sub Divisional Magistrate for issuance of 12 bore gun for protection of crop . It was stated that the

petitioner was asked to supply details as to why 12 bore gun was required . But the petitioner had not produced any evidence. It was also stated that in the facts and circumstances and in the light of the relevant provisions of Sections 13 and 14 of the Arms Act, 1959, the authority was satisfied that licence for 12 bore gun was not necessary for protection of crop and hence, it was not granted.

In the light of the relevant provisions, it is clear that Section 13 of the Act provides for grant of licence . Sub-section (3) thereof is relevant and it reads as under:

"(3) The licensing authority shall grant-

(a) a licence under section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection;

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 ion any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same."

From the proviso to clause (i) of section 13 (3) , extracted above, it is clear that where having regard to the facts and circumstances of the case, the licensing authority is satisfied that muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant licence in respect of other smooth

bore gun for protection of crop. In the instant case, there is no negative satisfaction by the authority. Hence, the authorities were right in holding that for protection of crop, muzzle loading gun and not 12 bore gun was sufficient as the case did not fall within the proviso.

For the foregoing reasons, the petition deserves to be disposed of and is accordingly disposed of. As stated by the authorities, it is open to the petitioner to apply for muzzle loaded gun . It is also open to the petitioner to file a fresh application if he is so advised for 12 bore gun with necessary particulars and evidence. If such application is made, the authorities will decide the same in accordance with law. The petition stands disposed of. Rule discharged. No order as to cost.

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parekh